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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~428.~~ 208

THE UNITED STATES, APPELLANTS,

vs.

THOMAS A. FITZPATRICK.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 19, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 423.

THE UNITED STATES, APPELLANTS,

vs.

THOMAS A. FITZPATRICK.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition	1	1
Pleas	6	2
Final judgment by the court	7	3
Application for an appeal	8	3
Order of Chief Justice allowing same	8	3
Certificate of presiding judge	9	4
Findings of fact	10	4
Certificate	12	4

1 In the United States Court of Claims.

THOMAS A. FITZPATRICK
vs.
THE UNITED STATES. } No. 3751.

To the honorable the Court of Claims of the United States:

The petition of Thomas A. Fitzpatrick respectfully represents that he is a citizen of the city of Washington, in the District of Columbia; that from the first of January, A. D. 1867, to the thirtieth day of June, A. D. 1867, he was employed by the defendants as a watchman on the public grounds in the city of Washington known as the Capitol Grounds; that he was duly appointed said watchman by the Commissioner of Public Buildings in conformity with law; that his salary as fixed by law was one thousand dollars per annum, and that the same was regularly paid to him by the Commissioner of Public Buildings.

Your petitioner further avers that the Congress of the United States did, at the second session of the Thirty-ninth Congress, pass a joint resolution giving additional compensation to certain employées in the civil service of the United States, which joint resolution was approved and signed by the President of the United States on the 28th day
2 of February, A. D. 1867, and is in the following words, to wit:

"That there shall be allowed and paid out of any money in the Treasury not otherwise appropriated, to the following-described persons now employed in the civil service of the United States at Washington, as follows: To civil officers and temporary and all other clerks, messengers, and watchmen, including enlisted men detailed as such, to be computed upon the gross amount of the compensation received by them; and employées, male and female, in the Executive Mansion and in any of the following-named Departments, or any Bureau or division thereof, to wit: State, Treasury, War, Navy, Interior, Post Office, Attorney General's, Agricultural, and including civil officers and temporary and all other clerks and employées, male and female, in the office of the Coast Survey, Naval Observatory, Navy Yard, Arsenal, Paymaster General, including the division of referred claims, Commissary General of Prisoners, Bureau of Refugees, Freedmen, and Abandoned Lands, Quartermaster's, Capitol and Treasury Extension, City Post Office, and Commissioner of Public Buildings, to the photographer of the Treasury Department to the superintendent of meters and to lamp-lighters under the Commissioner of Public Buildings,
3 an additional compensation of twenty per centum on their respective salaries as fixed by law, or where no salary is fixed by law, upon their pay respectively, for one year from and after the 30th day of June, 1866; but when any of said persons is or shall be only entitled to receive salary or pay for a part of said year, the said twenty per centum shall be computed on the amount such person is so entitled to receive for services in any or all of said departments or offices within said year: *Provided*, That the above-named additional compensation to the employées of the Patent Office, shall be paid out of the funds of said office: *Provided further*, That this resolution shall not apply to persons whose salaries as fixed by law exceed three thousand five hundred dollars per annum.

And your petitioner further avers that, by the terms of said resolution, the United States agreed to pay to your petitioner the additional sum of twenty per centum on his said salary as fixed by law aforesaid, amounting to the sum of one hundred dollars; that he has made applica-

tion to the proper officer of the Treasury Department having power to decide upon his application to wit, the First Comptroller thereof, for payment of the said twenty per cent. on said salary, and that payment was by him refused. The decision of said Comptroller is in the following words to wit:

4

"TREASURY DEPARTMENT,
"COMPTROLLER'S OFFICE,
"*April 23rd* 1867.

"SIR: I have examined the questions presented by you in relation to the claim of twenty per cent. additional compensation made by sundry persons formerly under the Commissioner of Public Buildings, and have come to the conclusion that the persons named are not within the provisions of the joint resolution of February 28th, 1867.

(Signed) "R. W. TAYLOR,
"*Comptroller.*

"Major B. B. FRENCH,
"*Washington.*"

Your petitioner further avers that he has at all times borne true and faithful allegiance to the Government of the United States, and that he has not in any way or manner voluntarily aided, abetted, or given encouragement to rebellion against it. That he is the sole owner of this claim, and that no other person has any interest therein.

Your petitioner therefore prays judgment against the United States on account of the matters and things hereinbefore set forth, for the sum of one hundred dollars, the amount of twenty per centum on

5 his said salary, from the first day of January, A. D. 1867, to the thirtieth day of June, A. D. 1867, together with the costs of this action.

J. DANIELS,
Att'y for Claimant, Washington, D. C.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Joseph Daniels, of said county, being duly sworn, deposes and says that he is the attorney for the claimant in the foregoing entitled action; that no assignment or transfer of this claim, or any part thereof, or any interest therein, has been made, except as in said petition stated; that said claimant is justly entitled to the amount claimed from the United States, after deducting all just credits and offsets; and deponent further says that he believes the facts as stated in said petition are true.

JOSEPH DANIELS.

Subscribed and sworn to before me this 14th day of Nov., 1868.
[L. S.] THO'S J. MYERS,
Notary Public.

6 In the Court of Claims of the United States.

THO'S A. FITZPATRICK
vs.
THE UNITED STATES. } No. 3751.

Special plea for defendants.

And the said defendants, by their Attorney General, now come, and,

by leave of court, (as expressed in Rule IX,) say that the said claimant, ought not further to maintain said action, because—

1. While the claim presented in this petition is such as is ordinarily settled in an Executive Department, the petition does not set forth the decision thereon of the proper Department of the Government to which application was (as is alleged) made for the payment of the claim. (Rule II.)

2. The petition does not set forth a full statement of the action, on the claim therein presented, by a Department of the Government, as required by section 1 of the act of February 4, 1855.

3. The evidence in the case does not show that any such application has ever been made to any Department of the Government, whether with or without success, or any action whatever thereon, without which action this court has no lawful jurisdiction in this case.

And the said defendants pray judgment, &c.

THOMAS H. TALBOT,
Assistant Attorney General.

7 In the Court of Claims.

THOMAS A. FITZPATRICK
vs.
THE UNITED STATES. } 3751.

And now, to wit, 23d of May, A. D. 1870, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Thomas A. Fitzpatrick, have, and recover of and from the United States the sum of one hundred dollars no cents ($100 00.)

By the court:
A true copy of record.

(Indorsed:) 3751. Thomas A. Fitzpatrick vs. The United States.

8 In the Court of Claims, Dec. term, 1869.

THOMAS A. FITZPATRICK
vs.
THE UNITED STATES. } No. 3751.

The defendants, by their Attorney General, come and ask the allowance of an appeal to the Supreme Court of the United States in this case, on the ground that the judgment will affect a class of cases.

THOMAS H. TALBOT,
Ass't Att'y Gen'l.

Filed in clerk's office, Aug. 17, 1870.

AT CHAMBERS.

Ordered, That the appeal as prayed in this cause be allowed.
Sept. 26, 1870.

JOSEPH CASEY,
Ch. Justice.

9 In the Court of Claims of the U. S., December term, 1869.

I, Edward G. Loring, presiding judge of the Court of Claims, do hereby certify that the judgment rendered in the case of Thomas A. Fitzpatrick vs. The United States, on the 23d day of May, 1870, affects a class of cases, and furnishes a precedent for the future action of an Executive Department in the adjustment of such class of cases.

EDW. G. LORING.

10 In the United States Court of Claims.

THO'S A. FITZPATRICK
vs.
THE UNITED STATES. } No. 3751.

The finding of facts and the conclusions of law on said facts on which the court founded its opinion.

This cause coming on to be heard the 23d day of May, 1870, before all of the judges of the Court of Claims, the said court finds as matters of fact—

That the claimant was an employé in the office of the Commissioner of Public Buildings, as keeper of the western gate of the Capitol grounds, and was in office from Jan'y 2ond, 1867, until June 30th, 1867, at a salary or pay of $1,000 per year.

That application was made to the First Comptroller of the Treasury to be allowed the additional compensation of 20 per centum on his salary, under the joint resolution of Congress approved February 28th, 1867, and that such compensation was refused.

That he was loyal to the Government of the United States, and that he took the oath of allegiance commonly called the test oath.

11 The claimant was not employed within the [four walls of the] office of the Commissioner of Public Buidings.

By the court.

The defendants also requested the court to make the following findings, which request was refused:

Tho's A. Fitzpatrick was keeper of the western gate from January 2ond, 1867, until March 4th, 1867. James Magee was keeper of the western gate from June 30th, 1866, until January 2ond, 1867.

The compensation of keeper of the western gate, Capitol square, was $876 per annum. (See 14 St. Large, 206, 456.)

On March 2ond, 1867, the office of Commissioner of Public Buildings was abolished. (14 St. L., 466.)

The claimant never made application for the settlement and payment of his claim, either before or during this litigation, to any Department of the Government in which such claims are ordinarily settled.

(Indorsed:) 3751. Tho's A. Fitzpatrick vs. The United States.

12 In the Court of Claims.

THOMAS A. FITZPATRICK
vs.
THE UNITED STATES. } No. 3751.

I, John Randolph, assistant clerk of the Court of Claims, do hereby

certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the counsel for defendants for the allowance of an appeal, as filed in the clerk's office, Aug. 17, 1870, and of the order of the Chief Justice of said allowing the same; of the certificate of the presiding judge; of the findings of fact on which the court founded its judgment, and of the proposed findings by defendants, which request was denied by the court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this seventeenth day of December, 1870.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 423. The United States, appellants, vs. Thomas A. Fitzpatrick. Court of Claims. Filed 19th December, 1870.